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70-297

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1971

No. 1842

JEFFERSON COUNTY TEACHERS ASSOCIATION
KENTUCKY EDUCATION ASSOCIATION
LOUISVILLE AND JEFFERSON COUNTY FEDERATION OF TEACHERS, LOCAL 672
WALLACE CANTRELL
THOMAS D. BELEW
MARY LOU JACKSON and
JAMES O. HALCOMB, JR. - - - - Petitioners

versus

BOARD OF EDUCATION OF JEFFERSON COUNTY, KENTUCKY - - - - - - Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KENTUCKY

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IN THE

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No. _____

JEFFERSON COUNTY TEACHERS ASSOCIATION
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LOUISVILLE AND JEFFERSON COUNTY FEDERATION OF TEACHERS, LOCAL 672
WALLACE CANTRELL
THOMAS D. BELEW
MARY LOU JACKSON and
JAMES O. HALCOMB, JR. - - - *Petitioners*

v.

BOARD OF EDUCATION OF JEFFERSON COUNTY, KENTUCKY - - - - - *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KENTUCKY

Petitioners pray that a Writ of Certiorari issue to review the Judgment of the Court of Appeals of Kentucky entered in the above entitled case on October 30, 1970.

CITATION TO OPINION BELOW

The opinion of the Court of Appeals of Kentucky is reported and the citation thereof is Ky., 463 S. W. 2d 627. The opinion of the Court of Appeals is attached

as Appendix A hereto. The Mandate of the Kentucky Court of Appeals affirming the judgment of that Court on Petitioner's motion for rehearing is attached hereto as Appendix A-1.

JURISDICTION

The Judgment of the Court of Appeals of Kentucky was entered October 30, 1970. An order denying petitioners' request for rehearing was entered March 19, 1971. Title 28, United States Code, Section 1257, confers jurisdiction upon this Court to review by Writ of Certiorari, the final Judgment rendered by the highest Court of a state in which a decision could be had. The Court of Appeals of Kentucky is the highest Court of the State of Kentucky in which a decision can be had.

QUESTIONS PRESENTED

(1) Could the Circuit Court, Jefferson County, Kentucky, enjoin a peaceful strike by public school teachers who were employees of the Jefferson County Board of Education.

(2) Whether the prohibitory provisions of the injunction granted by the Circuit Court were over-broad.

STATEMENT OF FACTS

On February 24, 1970, the teachers in the public schools of Jefferson County, Kentucky, employees of the Jefferson County Board of Education, went on strike. The teachers remained away from their work peacefully, without picketing, violence, or civil dis-

ruption or breach of the peace until the Circuit Court of Jefferson County, Kentucky issued a temporary injunction on February 28, 1970. Thereafter, on March 12, 1970, by agreed order, the case was submitted to the Jefferson Circuit Court on the prayer of the Jefferson County Board of Education for a permanent injunction. The Circuit Court on March 12, 1970, signed a Judgment making the temporary injunction permanent against all the Defendants before that Court. The Judgment of the Circuit Court of Jefferson County, Kentucky is attached hereto as Appendix B (both temporary and permanent injunctions).

CONSTITUTIONAL PROVISIONS AND STATUTES WHICH THE CASE INVOLVES

1. (A) The injunction granted by the Circuit Court of Jefferson County, Kentucky was in violation of Amendment XIV, Section 1 of the Constitution of the United States which reads:

> "All persons born and naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; *nor deny to any person within its jurisdiction the equal protection of the laws.*" (Emphasis Ours.)

(B) The injunction granted by the Circuit Court of Jefferson County, Kentucky violated Amendment I of the Constitution of the United States which reads:

"Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech of the press; or the right of the people peaceably to assemble and petition the government for a redress of grievances."

2. The Judgment of the Court of Appeals of Kentucky involved the interpretation of Kentucky Revised Statutes (K.R.S.) 336.130. Chapter 336, Kentucky Revised Statutes is entitled, "Department of Labor." This chapter is in *pari materia* with Chapter 337, Kentucky Revised Statutes, entitled "Wages and Hours," and Chapter 338, Kentucky Revised Statutes, entitled "Safety and Health of Employees." K.R.S. Chapter 336 is attached hereto as Appendix C. K.R.S. 337.010(2) and K.R.S. 338.010(3) are most pertinent to an interpretation of K.R.S. 336.130. K.R.S. 337.010(2) reads:

"K.R.S. 337.050 and 337.060 shall not apply to employers and employes subject to the provisions of the Federal Railway Labor Act, the Federal Safety Appliance Act, the Federal Railroad Mediation Act, the Interstate Commerce Commission or the Kentucky Public Service Commission, nor to hospitals or charitable institutions, nor to employes of the state or the United States or political subdivisions of either, nor to farming or work performed in homes, residences, restaurants, hotels and apartment houses such as cleaning, waiting on tables, washing dishes, cooking, answering calls of guests and waiting upon them and general house, restaurant or hotel work and outside salesmen."

K.R.S. 338.010(3) reads:

> "K.R.S. 338.020 to 338.060 shall not apply to employers and employes subject to the Federal Railway Labor Act, the Federal Safety Appliance Act, the Interstate Commerce Commission, or the Kentucky Public Service Commission, nor to places of employment subject to the jurisdiction of the Department of Mines and Minerals, nor to hospitals, or charitable institutions, nor to employes of the United States Government, the government of the Commonwealth or its political subdivisions, nor to farming or work performed in homes and residences."

FEDERAL QUESTIONS RAISED

Petitioners first raised the Federal Questions herein sought to be reviewed in their Answer to Respondent's Complaint filed in the Jefferson Circuit Court, Kentucky. Petitioners' answer is found on pages 13-15 of the Transcript of Record before the Kentucky Court of Appeals.

REASONS FOR GRANTING THE WRIT

A. The Court of Appeals of Kentucky judicially legislated that public school teachers in Kentucky do not have the right to engage in a work stoppage or strike. The Court, while acknowledging that legislation permitting public employees to strike would be valid, ignored the plain wording of the Kentucky Labor Statute K.R.S. 336.130 in arriving at its judicial conclusion.

K.R.S. 336.130 states *inter alia:*

> "Employees, collectively and individually may strike . . ."

This chapter of the Kentucky Statutes contains no definition of the word "employees" nor any exemption of public employees from its provisions.

Irrespective of the niceties of the legislative interpretation involved in this case, the real issue is the protection of basic constitutional rights. The Kentucky Court completely avoided being provoked into any discussion of the real issues of this case. Its opinion is devoid of any reasoning of the constitutional merits in support of its judicial declaration that public employees must be denied the right to strike even in the face of the plain wording of the Kentucky legislative act (K.R.S. 336.130).

In arriving at its conclusion, the Kentucky Court reasoned in error: (1) That the common law denied public employees the right to strike; (2) That the term "employee" as used in the statute K.R.S. 336.130 is ambiguous and that it does not include "public employees" within its definition. We feel that the Kentucky Court in attempting to achieve a social result which it feels is desirable, has deprived public school teachers of equal protection of the state law.

It has never been the common law of Kentucky that strikes by public employees are illegal. Section 233 of the Constitution of the Commonwealth of Kentucky adopted as its common law, those laws that were in force in the State of Virigina as of the first day of June, Seventeen Ninety Two (1792). Virginia had

adopted, as its common law, those laws in force in England as of March 24, 1607. The Kentucky Court has had opportunity to review the English common law concerning conspiracies of laborers in force as of 1607. In *Aetna Insurance Co., et al.* v. *Commonwealth,* 106 Ky. 864 (1899), the Kentucky Court said:

> "At the time we adopted the English law, the statutes passed in the time of the sixth Edward were in full force, which forbade all conspiracies and covenants or artificers, workmen, or laborers not to make or do their work but at a certain price or rate, under the penalty, on a third conviction, of the pillory and the loss of an ear, and to be taken as a man infamous.
>
> "But, so far as we are informed, the right of workingmen to combine for an increase or maintenance of their wages by lawful means has never been held unlawful in this Commonwealth. The statutes of Henry, Edward, and Elizabeth upon that subject, so far as the Kentucky authorities show, have always been as dead as they were in England after the act of 1875."

Apparently not feeling justified on the sole ground of a common law interpretation, the Kentucky Court finally based its decision on an interpretation of the word "employee" borrowed from the language of a 1940 Kentucky statute known as the Hunnicutt Act (Chapter 42bb, Carroll's Kentucky Code). The Hunnicutt Act concerned the general topic of labor including administration of the Department of Labor, Right to Strike, Wages and Hours, and Health and Safety of employees. The 1940 act had a general exemption sec-

tion (§1599C-39 Carroll's Kentucky Code) which exempted certain employees (including public employees) from the provisions of that act. In 1942, the Kentucky General Assembly completely revised all of the Kentucky Statutes, and in so doing, divided old Chapter 42bb into three separate chapters, being Chapter 336, "Department of Labor"; Chapter 337, "Wages and Hours"; and Chapter 338, "Health and Safety of Employees."

Carroll's §1599C-39, the exemption section, appears in Chapter 337 in revised form, and appears in Chapter 338 in revised form (different classifications having been added and subtracted for each chapter). *The exemption did not appear at all in Chapter 336.* (Emphasis Ours.)

Where statutes are *in pari materia* as here, the inclusion of an exemption in one part of the enactment contrast strongly with the absence of such exemption in the remaining part. This Court had opportunity to consider this maxim of legislative interpretation *(expressio unius est exclusio alterius)* in *Ford* v. *U. S.*, 273 U. S. 593, 47 Sup. Ct. 531, where it was held:

> "this maximum properly applies only when in the natural association of ideas in the mind of the reader that which is expressed is so set over by way of strong contrast to that which is omitted that the contrast enforces the affirmative inference that that which is omitted must be intended to have opposite and contrary treatment."

The legislature of Kentucky in 1942, by enactment of Chapters 336, 337, and 338 specifically did not

exempt public employees from the provisions of Chapter 336.130. The statute is obviously drawn with care as proved by the meticulous exemption provisions of its sister Chapters 337 and 338 (page 4 of this Petition).

In holding that public employees could not strike, the Kentucky Court legislated words into the act that were not there. The Court invented an ambiguity to the word "employee" which in common sense and law, does not, and has never existed. In so going the Court violated the provisions of a statutory construction statute [K.R.S. 446.080(4)] which reads:

> "All words and phrases shall be construed according to the common and approved usage of language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law, shall be construed according to such meaning."

Petitioners seek and are entitled to know, why in the absence of specific legislation, all public employees, irrespective of the nature of their work, should be prohibited from striking. Such a ruling defies rational argument and is simply a technique for avoiding dealing with the merits of the issue. Such argument indicates a limitation in the thinker not attributable to the subject matter. In the case of a peaceful strike of no major disruption of the community, the impact on society is no more, and in many cases is less than, many strikes by private employees. There are many different types of public employees; on the one hand there are public employees whose service to the community is critical in point of time, such as policemen,

firemen, and perhaps sanitation workers. But what about hospital aides, social workers, gardeners, clerks, chauffeurs, and bus drivers? It is not equal protection of the law to permit strikes by private school teachers and prohibit the same act by public school teachers. This argument can also be advanced for utility workers, bus drivers, hospital employees, and many others. In many cases the only distinction between a private and public employee is the identity of the employer, not the function of the employee. A strike by employees of a privately owned transit company is as disruptive as if the company were publicly owned. Strikes by railroads, airlines, truck drivers, and others, though not enjoinable, have far more impact on society than a short-term non-disruptive strike of public school teachers in a protest to the legislature of their state.

The fact of public employment should not *per se,* be a sufficient basis for distinction of constitutional rights. In *Garrity* v. *New Jersey,* 385 U. S. 493, this Court repudiated the argument that different constitutional standards should apply to public employees, holding:

> "policemen, like teachers and lawyers, are not relegated to a watered down version of constitutional rights."

Again, in *Keyishian* v. *Board of Regents,* 385 U. S. 589, the Court found no reasonable basis for distinction of the constitutional rights of public and private employees.

In order for the Circuit Court of Jefferson County, Kentucky to enjoin the teachers strike, the acts of the

teachers in striking must have been either illegal under the laws of the State of Kentucky or conducted in an illegal manner; and in either case, the act must create an irreparable injury. Petitioners have filed with this Court a transcript of the testimony concerning the alleged injury sustained by the Respondent, Board of Education of Jefferson County, Kentucky. The transcript of testimony shows that on February 23, the day before the strike, the superintendent of the Jefferson County school system issued a public statement reported in the press in Louisville, Kentucky that the strike would have to go nineteen (19) days before the Board would consider asking for an injunction (Transcript of Evidence, page 57). In spite of the above statement, the plaintiffs on the third day of the strike, filed this suit for injunction contending that irreparable injury would occur if it continued any longer. We advanced to the Kentucky Court of Appeals the argument that the Respondent's tongue-in-cheek attitude actually reflected its concern over the state basketball tournament which could not begin until the strike was ended.

Allowing public employees to strike is not a novel legal concept. For example, the anti-injunction statute of Minnesota protects all employees except policemen and firemen or any other public employee charged with duties relating to *public safety*. New Jersey has acknowledged that there may be a distinction as to type of public employees. *Board of Education, Burrough of Union Beach* v. *New Jersey Education Association*, N. J., 247 A. 2d 867. The statute establishing the Los Angeles Metropolitan Transit Authority specifi-

cally provided that the employees of the transit authority had the right to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. *Los Angeles Metropolitan Transit Authority* v. *Brotherhood of Railroad Trainmen,* Calif., 355 P. 2d 905.

In Arizona, that Court held that water district employees had the right to strike and distinguished such employees from those engaged in a strictly governmental function. *Local 266 International Brotherhood of Electrical Workers, A.F.L.* v. *Salt River Project Agricultural Improvement and Power District,* Ariz., 275 P. 2d 393.

A review of all cases involving strikes by public school teachers shows that the issue, while new to Kentucky, has been decided adversely to the teachers in five states: Florida, Kansas, New Jersey, Michigan, and Indiana. In New Jersey, Michigan, and Florida a statute prohibits strikes by public employees. In Kansas and Indiana there is no statute similar to K.R.S. 336.130 granting (all) employees the right. In the Indiana case, *Anderson Federation of Teachers* v. *School, City of Anderson, Ind.,* 254 N. E. 2d 329, in a strong dissent supporting the right of teachers to strike, Justice De Bruler said:

> "The majority opinion offers absolutely no justification for its holding that every strike by any public employee, including teachers, is illegal and therefore enjoinable regardless of how peaceful and non-disruptive the strike is."

B. Writ of Certiorari should be granted also on the ground that the injunction granted by the Circuit

Court of Jefferson County, Kentucky was over-broad in that it enjoined the teachers from

> "aiding, abetting, inducing, encouraging, sanctioning, and condoning the work stoppage or strike."

And further enjoined the teachers from

> "inducing or encouraging a concerted refusal by teachers to withhold their services."

Petitioners pointed out to the Kentucky Court and contend here that enjoining such nebulous activities as "sanctioning" and "condoning" creates such a fatal vagueness that the injunction could not hope to be enforced.

This precise issue was reviewed by the California Court in the case of *In re: Barry, et al.* v. *California,* 436 P. 2d 273, where the injunction prohibited the participants:

> "from ordering or continuing to order or asking or requesting or otherwise inducing or attempting to induce any employee of the plaintiff to cease work for or not to work for the plaintiff."

The Califorina Court found such injunction to be in violation of the first amendment of the Constitution of the United States and said:

> "We are not persuaded by the County's argument that these sections must be viewed in context in order to supply the necessary limitations. When restriction in the area of free expression are at issue, an appeal to context is insufficient to satisfy constitutional requirements of precision."

Additional citations on this point are found in *Stromberg* v. *California,* 283 U. S. 359; *Cramp* v. *Board of Public Instruction,* 368 U. S. 278; *Badgett* v. *Bullett,* 377 U. S. 360.

CONCLUSION

Petitioners earnestly contended to the Kentucky Court of Appeals that the injunction in this case violated their rights under the First and Fourteenth Amendment of the Constitution of the United States. Those Constitutional questions were clearly raised and argued and the Kentucky Court of Appeals has ruled thereon.

For the foregoing reasons this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX A

Opinion and Judgment of the Court of Appeals of Kentucky

COURT OF APPEALS OF KENTUCKY

RENDERED OCTOBER 30, 1970

JEFFERSON COUNTY TEACHERS ASSOCIATION, ET AL., - - - - - - - - - *Appellants*

v.

BOARD OF EDUCATION OF JEFFERSON COUNTY, KENTUCKY - - - - - - - - *Appellee*

Appeal from Jefferson Circuit Court
Chancery Branch, First Division
Honorable McCauley L. Smith, Judge

OPINION OF THE COURT BY COMMISSIONER CLAY—AFFIRMING

This is an appeal from a judgment permanently enjoining appellants (teachers' organizations and individual teachers in the Jefferson County school system) from participating in a concerted work stoppage or strike in the public schools of Jefferson County. It is contended the injunction violated appellants' statutory and constitutional rights and that no irreparable injury was shown.

On February 24 of this year, the school teachers in the Jefferson County school system failed to report to work, and there is no question but that they conducted for four

days what must be characterized as a strike. They returned to work upon the issuance of a temporary injunction in this action.

Before reaching the controlling question before us, it appears appropriate to give some background concerning strikes by public employees. Under the common law it is recognized that public employees do not have the right to strike or to engage in concerted work stoppages. 48 Am. Jur. 2d, Labor and Labor Relations, §1361 (page 848); Witchita Public Schools Emp. U., Local No. 513 v. Smith, 194 Kan. 2, 397 P. 2d 357 (1964); Anderson, Fed. of Teachers v. School City of Anderson, Ind., 254 N. E. 2d 329 (1970); Goldberg v. City of Cincinnati, 23 Ohio App. 2d 97, 261 N. E. 2d (1970). Norwalk Teachers' Asso. v. Board of Education, 138 Conn. 269, 83 A. 2d 482, 31 A.L.R. 2d 1133 (1951), is a leading case on this subject. It involved the question of whether or not a school teachers' association could engage in a strike to gain its objectives. In answering this question in the negative, the court observed (page 484 A. 2d):

> "Under our system, the government is established by and run for all of the people, not for the benefit of any person or group. The profit motive, inherent in the principle of free enterprise, is absent. It should be the aim of every employee of the government to do his or her part to make it function as efficiently and economically as possible. The drastic remedy of the organized strike to enforce the demands of unions of government employees is in direct contravention of this principle."

Except in a rather oblique manner, the appellants do not dispute this general rule.

The federal government, and some states, have confirmed by statute this principle and specifically denied to

public employees the right to strike. The National Labor Relations Act of 1935, the Fair Labor Standards Act of 1938, and the Labor Management Relations Act of 1947 exclude federal employees from the collective bargaining rights secured in private employees. New Jersey, Michigan and Florida by statute expressly forbid public employees to strike. While our attention has not been called to any legislation of other states *authorizing* strikes by public employees, we may assume for the purpose of this case that such legislation would be valid. On this theory it is appellants' contention that our legislature has recognized such right in KRS 336.130. This statute specifically provides in part:

> "(1) Employes may, free from restraint or coercion by the employers or their agents, associate collectively for self-organization and designate collectively representatives of their own choosing to negotiate the terms and conditions of their employment to effectively promote their own rights and general welfare. Employes, collectively and individually, may strike, engage in peaceful picketing, and assemble collectively for peaceful purposes."

The subject matter of this Chapter 336 is "Department of Labor." It does not contain a definition of "employes." It is appellants' position that this word encompasses all employees, both public and private. If so, appellants would have a legislatively granted right to strike.

In the light of our earlier discussion concerning the distinction recognized in the common law and by statutes between private and public employees with respect to their right to strike, it is our opinion that the word "employes" as used in this statute is ambiguous. In Stone v. United States, D.C. Pa., 55 F. Supp. 230, 233 (1943), it was stated that in construing the meaning of the term "employee",

"* * * it is essential to understand the objectives and scheme of the act in order to determine the congressional intent." It was also said in this opinion that this term is used generally to distinguish between one who performs services for another and one who serves the public at large.

In Knight v. Board of Administration of State Emp. Retirement System, 32 Cal. 2d 400, 196 P. 2d 547, 548, 5 A.L.R. 2d 410 (1948), it was observed that the term "employees" has no fixed meaning which must control in every instance. In State ex rel. Maryland Casualty Co. v. Hughes, 349 Mo. 1142, 164 S. W. 2d 274, 277 (1942), it was said that this term may have different meanings in different connections. We think an examination of the vast number of cases cited in Words and Phrases, Permanent Edition, Volume 14, under the subject "Employee" demonstrates quite persuasively that this term does not have such a fixed meaning in the law that it is free of ambiguity. This being so, it is proper for us to seek the legislative intent carried into KRS 336.130 by reference to the official Acts of the General Assembly. Fidelity & Columbia Trust Co. v. Meek, 294 Ky. 122, 171 S. W. 2d 41 (1943). In so doing our problem is solved.

In 1940 the legislature enacted the Hunnicutt Act as Chapter 105 of the Acts of the General Assembly. This Act related to employer-employee relations, and recognized the right to collectively bargain, strike, picket, etc. Article V of this Chapter provided specifically that there were exempted from all of the provisions of the Act "* * * employees of the United States, the State and any and all political subdivisions or agencies thereof." In Baldwin's February 1941 Supplement to Carroll's Kentucky Statutes this Act was incorporated as Chapter 42 bb. The exemption provision (Article V) appears as section 1599 C-39.

In 1942 the statutes were completely revised as the Kentucky Revised Statutes. In the revised statutes, Carroll's

Chapter 42 bb was incorporated in KRS Chapters 336, 337 and 338. What had been Carroll's section 1599 C-39 (Article V) was compiled in KRS 336.050, 337.010 and 338.010. The exemption provision was incorporated in KRS 337.010(2), for Chapter 337, relating to "Wages and Hours", and in KRS 338.010(3), for Chapter 338, relating to "Safety and Health of Employees", but was not included in KRS 336.050, nor in any section of Chapter 336.

The original Act pertaining to employer-employee relations clearly and expressly excluded public employees from the granted right to strike. The apparently inadvertent omission of this exclusion in Chapter 336 when the statutes were revised cannot be held to have changed the legislative policy and the law. Therefore appellants cannot properly claim the legislature has granted them such right, and their principal contention must fall.

It is next contended that denial of the right of public school teachers to strike violates both the federal and Kentucky constitutions. There is an allegation that the denial of this right constitutes a violation of due process principles, but appellants fail to point out in what respect they have been deprived of due process. This argument seems to be based on the assumption that public employees have the constitutional right to strike, which is an unfounded assumption and begs the question.

It is said that to deny the right to strike deprives appellants of the equal protection of the law under the Fourteenth Amendment to the Constitution of the United States. However, they admit in their brief that valid distinctions may be made between public and private employees in this area. The equal protection question has been considered in several cases. In City of Detroit v. Division 26 of Amalgamated Ass'n., 332 Mich, 237, 51 N. W. 2d 228 (1952), the constitutionality of a statute which specifically prohibited striking by employees of the State of Michigan was ques-

tioned. It was therein held that such a statute did not violate any provisions of the Constitution of the United States or the constitution of the state, including due process and equal protection of the law. In School Dist. for City of Holland v. Holland Educ. Assn., 380 Mich. 314, 157 N. W. 2d 206 (1968), the argument was made that the recognized rights of private employees which had developed in recent years had eroded the basis of the court's decision in the City of Detroit case. The Michigan Supreme Court reaffirmed the earlier determination that the legislature could constitutionally prohibit public employees from striking.

In Abbott v. Myers, 20 Ohio App. 2d 65, 251 N. E. 2d 869 (1969), an Ohio statute which specifically provided "No public employee shall strike" was held valid. The constitutionality of such a statute was also upheld in Fairview Hospital Ass'n v. Public Building Serv., Etc., Minn., 64 N. W. 2d 16 (1954). As we have heretofore noted, there is a reasonable basis for distinguishing between private and public employees, particularly in this area. Therefore, to treat them differently is not a denial of equal protection in the constitutional sense.

It is further contended that the denial of appellants' right to strike constitutes a violation of the Thirteenth Amendment to the Constitution of the United States and § 25 of the Kentucky Constitution in that it imposes on appellants involuntary servitude. This contention is adequately answered in City of Los Angeles Building and Construction Trades Council, Cal., 210 P. 2d 305 (1949); In Re Block, 50 N J. 494, 236 A. 2d 589 (1967); and Pinellas Co. C. Teachers Ass'n. v. Board of Public Instr., Fla., 214 So. 2d 34 (1968). The basis of these decisions is that an injunction of the kind before us does not "compel performance of personal service against the will of the employee" because he can terminate his contract if he so desires.

It is further contended the injunction violates appellants' constitutional rights of free speech and public assembly. Such rights are not absolute but are limited by the countervailing rights of others. The injunction enjoins appellants from "participating in a concerted work stoppage or strike by the teachers in the public schools of Jefferson County." It prohibits the commission of illegal acts, and the rights of free speech and public assembly do not license violation of law. In City of Los Angeles v. Los Angeles Building and Construction Trades Council, Cal., 210 P. 2d 305, 309 (1949), it is said:

> "* * * illegality of purpose provides a complete basis for injunctive relief against conduct which would otherwise be deemed a permissible exercise of fundamental rights. Where such illegality consists of violation of settled public policy, as well as in other cases of illegal conduct, the injured party has a right to be protected from the imminent harmful consequences of such action."

It is next contended that because two of the appellant organizations were operating under a negotiating agreement with appellee, this gave them the same bargaining rights which unions have in private industry, including the right to strike. We are cited no authority for the proposition that the right to collectively bargain gives the right to strike, particularly when the right to strike is otherwise inhibited. It may be pointed out that the contract between one of the appellants and appellee specifically provides for arbitration, and by implication this would foreclose the right to strike as a means of settling a grievance. See Teamsters Union v. Lucas Flour Co., 369 U. S. 95, 7 L. Ed. 2d 593, 82 S. Ct. 571 (1962).

It is finally contended appellee failed to show such irreparable injury resulting from this strike as to justify

an injunction. The record contains ample proof of serious and irreparable impairment of the school system of Jefferson County (of which a court probably could take judicial notice). The contention is completely lacking in merit.

The judgment is affirmed.

All concur.

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APPENDIX A-1

COURT OF APPEALS OF KENTUCKY

FALL TERM—OCTOBER 30, 1970

JEFFERSON COUNTY TEACHERS ASSOCIATION, Et Al.

v.

BOARD OF EDUCATION OF JEFFERSON COUNTY, KENTUCKY

MANDATE

Appeal from a judgment of the Chancery Branch—1st Div. Jefferon Circuit Court

The Court being sufficiently advised, it seems there is no error in the judgment herein.

It is therefore considered that said judgment be affirmed; which is ordered to be certified to said court.

It is further considered that the appellee recover of the appellants their cost herein expended.

A copy—Attest:

Dick Vermillion, C. C. A.
By (s) John C. Scott, D. C.

Issued March 19, 1971

APPENDIX B

Judgment of Circuit Court of Jefferson County, Kentucky Granting Temporary Injunction

and

Judgment of Circuit Court of Jefferson County, Kentucky Granting Permanent Injunction

---

JEFFERSON CIRCUIT COURT

CHANCERY BRANCH, FIRST DIVISION

No. 136009

BOARD OF EDUCATION OF JEFFERSON COUNTY, KENTUCKY - - - - - - - - - *Plaintiff*

v.

JEFFERSON COUNTY TEACHERS ASSOCIATION, ET AL. - - - - - - - - - *Defendants*

TEMPORARY INJUNCTION

ORDERED, ADJUDGED AND DECREED that the individual defendants, the members of the defendant classes herein, the defendant unincorporated associations, and the defendant unincorporated labor organization, their officers, agents and representatives be and they hereby are restrained and enjoined from aiding, abetting, inducing, encouraging, sanctioning, condoning, or otherwise causing and participating in a concerted work stoppage or strike by the teachers in the public schools of Jefferson County, Kentucky in violation of said teachers' respective and various contracts of employment with the plaintiff; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all the defendants herein as above stated, be and they hereby are restrained and enjoined from engaging in, participating in, inducing or encouraging a concerted refusal by the teachers of the public schools of Jefferson County, Kentucky in the course of their employment to withhold the services required by them under their various and respective contracts of employment with the plaintiff; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Temporary Injunction be and the same is hereby effective until further order of this Court.

(s) MACAULEY SMITH
Judge

Date: Feb. 28, 1970 4:17 PM

Tendered By:

(s) E. GERRY BARKER
1006 Kentucky Home Life Bldg.
Louisville, Kentucky 40202
587-6763

(s) E. PRESTON YOUNG
704 Louisville Trust Bldg.
Louisville, Kentucky 40202
585-4168

Attorneys for Plaintiff

JEFFERSON CIRCUIT COURT

CHANCERY BRANCH, FIRST DIVISION

No. 136009

BOARD OF EDUCATION OF JEFFERSON COUNTY, KENTUCKY - - - - - - - - - *Plaintiff*

v.

JEFFERSON COUNTY TEACHERS ASSOCIATION, Et Al. - - - - - - - - - *Defendants*

MOTION—ORDER

Comes now the plaintiff and respectfully moves the Court to make the temporary injunction heretofore entered on February 28, 1970, a permanent injunction in a final judgment.

(s) E. GERRY BARKER
1006 Kentucky Home Life Bldg.
Louisville, Kentucky 40202
587-6763

(s) E. PRESTON YOUNG
704 Louisville Trust Building
Louisville, Kentucky 40202
585-4168

Attorneys for Plaintiff, Board of Education of Jefferson County, Kentucky

ORDER

Upon motion of the plaintiff, the Court having reviewed the pleadings and having heard extensive evidence on behalf of all parties herein on February 28, 1970, and being otherwise sufficiently advised, it is

ORDERED, ADJUDGED AND DECREED that the temporary injunction heretofore entered in this case on February 28, 1970, be, and the same hereby is, made permanent as a final judgment for all purposes.

Entered at Louisville, Kentucky, this 12th day of March, 1970.

(s) MACAULEY SMITH
Judge

Date Mar. 12, 1970

Notice of filing waived:

(s) CHARLES MCCONNELL
Attorney for JCTA and KEA

(s) WILLIAM FRIEDLANDER
Attorney for Louisville and Jefferson County Federation of Teachers

APPENDIX C

Complete Text of Chapter 336, Kentucky Revised Statutes

CHAPTER 336
DEPARTMENT OF LABOR

336.010 [1599c-4] **Definitions for KRS 336.010 to 336.160.**

As used in KRS 336.010 to 336.160, unless the context requires otherwise:

(1) "Commissioner" means Commissioner of Labor; and

(2) "Department" means Department of Labor.

336.020 [4618-111] **Commissioner and division of department.**

The department shall be headed by a Commissioner of Labor, and shall be divided for administrative purposes into such divisions as the commissioner, with the approval of the Governor, determines. (1966 c 255, § 252. Eff. 6-16-66. 1942 c. 19, § 2(1))

336.030 [1599c-6; 4767a-3] **Employes; appointment; salaries.**

The commissioner, with the approval of the Governor, shall apoint necessary deputies, attorneys, statisticians, inspectors and other employes and fix their salaries according to law. These employes shall receive their actual necessary expenses.

336.040 [1599c-7; 4618-110] **Functions and duties of department.**

(1) The department shall exercise all administrative functions of the state concerned wih employer-employe relationships, including:

(a) Safety of workers; and

(b) The Workmen's Compensation Board. (1966 c 255, § 253. Eff. 6-16-66)

(2) The department shall:

(a) Promote friendly and cooperative relations between employers and employes;

(b) Accumulate and publish industrial statistics and aid and encourage the development of new industries and the expansion of existing industries in Kentucky;

(c) Encourage, promote and develop fair practices both by employers and employes; discourage and eliminate as far as practicable all unfair practices by either, and enforee laws relating to unfair practices;

(d) Foster, promote and develop the welfare of both wage earner and industries in Kentucky;

(e) Improve working and living conditions of employes and advance their opportunities for profitable employment; and

(f) Inquire into the causes of accidental injuries and occupational diseases arising out of and in the course of employment, and advance measures for the prevention of accidents and occupational diseases and for the improvement of sanitary conditions in places of employment. (1966 c 255, § 253. Eff. 6-16-66)

336.050 [1599c-39; 4767a-3] **Duties of commissioner.**

The commissioner in person or by representative shall:

(1) Investigate and ascertain the wages of all women and minors employed in this state.

(2) Enter the place of business or employment of any employer of women or minors to examine and inspect all books, registers, pay rolls, and other records that have a bearing upon the question of wages of women or minors, and to ascertain whether the orders of the commissioner are complied with; and

(3) Require from the employer a full and correct statement in writing when the commissioner or his representa-

tive considers it necessary, of the wages paid to all women and minors in his employment.

(4) Upon complaint, prosecute any violation of any of the provisions of any law which it is his duty to administer or enforce.

336.060 [1599c-12; 1599c-13; 4767a-3] **Authority to issue and serve subpoenas, take depositions; enforcement of subpoenas.**

(1) In the conduct of an investigation or hearing, the commissioner or any authorized deputy may issue subpoenas to compel the attendance of witnesses and parties and the production of books, papers and records competent and relevant to the matter under investigation; administer oaths; examine witnesses under oath; take the verification or proof of written instruments; and take testimony, depositions and affidavits to carry out any law over which the department has jurisdiction. (1946 c 244. Eff. 6-19-46)

(2) If any person called for an appearance not more than fifty miles from the place of service fails to obey the subpoena, the commissioner, or his authorized deputy or attorney, may apply to the circuit court having jurisdiction either of the parties or the subject matter. Unless sufficient reason is shown for failure to obey the subpoena, the circuit court shall enforce it and punish any violation as a contempt of court. (1946 c. 244. Eff. 6-19-46)

(3) Subpoenas issued under this section may be served by an inspector or other authorized representative of the department, at any place in the state. (1946 c 244. Eff. June 19, 1946.)

336.070 [33a-7; 1599c-9] **Investigation of working conditions.**

The department shall make investigations, collect and compile statistics and report on the conditions of industries,

labor and unemployment, and upon all matters relating to employer-employe relations and working conditions. Complete permanent records shall be made of all investigations, showing date of examination, condition in which the establishment was found, and changes ordered.

336.080 [33a-6; 1599c-10] **Inspection of places of employment.**

The commissioner may have inspected any place of employment affected by or subject to any law of this state relating to the employment of labor, except places of employment within the jurisdiction of the Department of Mines and Minerals. In the discharge of his duties, the commissioner or his authorized deputy, may enter places of employment at any reasonable time. Upon request, the department shall furnish to any employer a detailed report of any inspection in his place of business.

336.090 [33a-10] **Inspectors to report violations of health and fire laws and rulings.**

(1) The department shall be furnished with a copy of all the laws and rulings of the State Board of Health affecting sanitary conditions in places of employment, not covered by the labor laws of the state, and shall report in writing to the state, county or city health authorities any violations coming under the observation of its inspectors while visiting places of employment in the regular performance of their duty. (1966 c 255, § 254. Eff. 6-16-66)

(2) The inspectors shall be furnished with a copy of all the laws and rulings of the Department of Public Safety relating to fire hazards in places of employment, and shall report in writing to the state, county or city authorities any violations coming under their observation while visiting places of employment in the regular performance of their duty. (1966 c. 255, § 254. Eff. 6-16-66)

336.100 [33a-11] **Notice of occupancy of place of employment to be given.**

Within one month after any employer begins to occupy a factory, workshop, mill or other place of employment he shall notify the department, in writing, of such occupancy. If the employer is a corporation, the notice shall state the legal title of the corporation and name of an agent upon whom service of summons can be made; and if a firm, the individual names of members of the firm and its legal title.

336.110 [33a-8] **Unlawful to refuse to admit inspector.**

No person shall refuse or attempt to prevent the admission of any inspector of the department to any place which he is required by law to inspect, at any reasonable hour, or during the working hours of the persons employed there, or interfere with the performance of the official duties of any inspector. Penalty, 336.990(2)

336.120 [1599c-14] **Cooperation with Federal agencies.**

The commissioner, with the approval of the Governor, may enter into cooperative agreements with appropriate agencies of the Federal Government, whereby Acts of Congress and regulations issued in pursuance thereof affecting the employment of labor within this state may be administered, supervised, inspected and enforced by the department. Similar agreements may be entered into by the commissioner with the approval of the Governor, for the cooperation of Federal agencies in the enforcement of state laws whose enforcement is vested in the commissioner.

336.130 [1599c-28] **Employes may organize, bargain collectively, strike, picket; conduct prohibited.**

(1) Employes may, free from restraint or coercion by the employers or their agents, associate collectively for self-organization and designate collectively representatives of their own choosing to negotiate the terms and conditions of their employment to effectively promote their own rights

and general welfare. Employes, collectively and individually, may strike, engage in peaceful picketing, and assemble collectively for peaceful purposes.

(2) Neither employers or their agents nor employes or associations, organizations or groups of employes shall engage or be permitted to engage in unfair or illegal acts or practices or resort to violence, intimidation, threats or coercion.

336.140 [1599c-8] **Commissioner to investigate and mediate labor disputes.**

The commissioner may inquire into the cause of strikes, lockouts and other disputes between employers and employes, and endeavor to effect an amicable settlement. He may create within the department boards to which disputes between employers and employes may be submitted on request of both the employer and the employes for mediation. Where a joint wage agreement, existing between an employer and any labor organization, provides for the settlement of disputes, any disputes that arise shall be settled by the terms of the contract, and when so settled shall be binding and final upon the commissioner.

336.150 [1599c-29] **Conciliation of labor disputes; joint wage agreement; federal jurisdiction to supersede.**

(1) The commissioner may act as conciliator and mediator and appoint conciliators and mediators in labor disputes whenever his intervention is requested by either party. He may also offer his services as conciliator and mediator if any emergency by reason of a labor dispute is found to exist at any time. If the parties accept conciliation and mediation, the commissioner, in the course of such conciliation and mediation, may hold hearings to determine the reason for the labor dispute and receive the testimony of witnesses under oath. Any findings of fact made by him in connection with the hearing shall be reduced to

writing and made a public record of his department. If the Governor directs, the commissioner shall take any steps he considers proper to effect a voluntary, amicable settlement of differences between employer and his employes.

(2) In any labor dispute in which the services of the commissioner as conciliator and mediator have been accepted by both parties, no strike or lockout shall take place pending the efforts of the commissioner or his authorized representatives to conciliate and mediate the dispute. When the services of the commissioner as conciliator and mediator are accepted by both parties to a labor dispute, he shall promptly investigate and undertake to conciliate and mediate it without delay. No agreement accepting the service of the commissioner shall be binding on either party for longer than fifteen days, but the term may be extended by mutual consent of the parties to the agreement.

(3) Nothing in this section shall apply where a joint wage agreement provides for settlement of disputes. Any dipute arising under such agreement shall be settled according to it. Nothing in KRS 336.130 or this section shall apply where the authority of a Federal agency has been invoked or a Federal agency assumes jurisdiction. If the commissioner has assumed jurisdiction, and a Federal agency thereafter assumes jurisdiction, the authority of the commissioner shall cease pending Federal jurisdiction.

336.160 [1599c-11] **Reports to General Assembly.**

The commissioner shall present biennal reports to the General Assembly giving statistical data relating to employment and unemployment in the state, such as the hours and wages of employes, cost of living, the amount of labor required, the estimated number and classification of persons unemployed, the estimated number of persons depending on daily labor for support, the probable chances of increased employment, the number of unemployed depend-

ing on public relief, facts relating to industrial accidents, the workers' compensation for industrial injuries, labor disputes, and facts relating to acts of the department in the enforcement of the law and its work generally.

LABOR ORGANIZATIONS

336.170 Certain national and international labor organizations to have local units in Kentucky.

(1) It shall be unlawful for any national or international labor organization having one hundred or more members in good standing who reside or work in Kentucky not to have at all times one or more duly chartered and established local or subsidiary organizations in this State. (1952 c 164, § 1. Eff. 6-19-52)

(2) Any national or international labor organization which violates subsection (1) of this section shall, for each offense, be fined not less than one thousand dollars nor more than ten thousand dollars. (1952 c. 164, § 2. Eff. 6-19-52.)

336.180 "Labor organization" defined.

As used in KRS 336.190 and 336.200, unless the context requires otherwise, the term "labor organization" means any organization of any kind, or any agency or employe representation committee or plan, in which employes participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work. (1962 c. 303, § 1. Eff. 6-14-62)

336.190 Unlawful practice by carrier, shipper.

It shall be unlawful for any carrier or shipper of property, or any association of such carriers or shippers, to agree to pay, or to pay, to or for the benefit of a labor organization, directly or indirectly, any charge by reason of the placing upon, delivery to, or movement by rail, or by a railroad car, of a motor vehicle, trailer or container

which is also capable of being moved or propelled upon the highways. (1962 c 303, § 2. Eff. 6-14-62) Penalty, 336.990(3)

336.200 Unlawful practice by labor organization.

It shall be unlawful for any labor organization to accept or receive or to agree to accept or receive from any carrier or shipper of property, or any association of such carriers or shippers, any payment described in KRS 336.190. (1962, c 303, § 3. Eff. 6-14-62) Penalty, 336.990(3)

336.990 [33a-8; 33a-13] **Penalties.**

(1) Upon proof that any person employed by the department as a labor inspector has taken any part in any strike, lockout or similar labor dispute he shall forfeit his office.

(2) Any person who violates KRS 336.110 shall for each offense be fined not less than twenty-five dollars nor more than one hundred dollars or imprisoned for not more than fifty days, or both.

(3) Any corporation, association, organization, or person that violates KRS 336.190 and 336.200 shall be fined not less than one hundred dollars nor more than one thousand dollars for each offense. Each act of violation, and each day during which such an agreement remains in effect, shall constitute a separate offense. (1962 c. 303, § 4. Eff. 6-14-62)

CERTIFICATION

This is to certify that three (3) copies of this Petition have been served by depositing same in a United States mail box with first class postage prepaid addressed to counsel of record for Respondent pursuant to Part VIII, Section 33, Rules of the Supreme Court.

McCONNELL & HAUCH

Chas. McConnell

CHARLES C. McCONNELL
306 Kentucky Home Life Building
Louisville, Kentucky 40202

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1971

~~No. 1842~~

JEFFERSON COUNTY TEACHERS ASSOCIATION
KENTUCKY EDUCATION ASSOCIATION
LOUISVILLE AND JEFFERSON COUNTY FEDERATION OF TEACHERS, LOCAL 672
WALLACE CANTRELL
THOMAS D. BELEW
MARY LOU JACKSON and
JAMES O. HALCOMB, JR. - - - Petitioners

versus

BOARD OF EDUCATION OF JEFFERSON COUNTY, KENTUCKY - - - Respondent

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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WESTERFIELD-BONTE CO., INC., 619 W. KENTUCKY, LOUISVILLE, KY.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1971

No. 1842

JEFFERSON COUNTY TEACHERS ASSOCIATION
KENTUCKY EDUCATION ASSOCIATION
LOUISVILLE AND JEFFERSON COUNTY FEDERATION OF TEACHERS, LOCAL 672
WALLACE CANTRELL
THOMAS D. BELEW
MARY LOU JACKSON and
JAMES O. HALCOMB, JR. - - - *Petitioners*

v.

BOARD OF EDUCATION OF JEFFERSON COUNTY, KENTUCKY - - - - - - *Respondent*

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

Respondent, Board of Education of Jefferson County, Kentucky, in opposition to the Petitioners' pra[redacted]for a Writ of Certiorari to review the Judgment of the Court of Appeals of Kentucky entered herein on October 30, 1970, respectfully states to the Court:

REFERENCE TO OPINION BELOW

The Kentucky Court of Appeals' opinion is to be found in 463 S. W. 2d 627. It is attached as Appendix A to the Petition for Writ of Certiorari herein, and the Mandate affirming its Judgment on Petitioners' Motion for Rehearing is attached as Appendix A-1 to said Petition.

JURISDICTION

The Respondent adopts Petitioners' statement of Jurisdiction, and states to the Court that the time for filing this Brief in Opposition was extended by the Clerk of this Court to and including August 17, 1971 under Paragraph 5 of Rule 34 of the Rules of this Court.

CONSTITUTIONAL PROVISIONS AND STATUTES WHICH THE CASE INVOLVES

Respondent adopts Petitioners' statement of the "Constitutional Provisions and Statutes Which The Case Involves."

STATEMENT OF CASE

Respondent accepts Petitioners' "Statement of Facts" as its statement of the case including all Appendices thereto.

QUESTIONS PRESENTED

1. Has not this Court previously decided all issues presented by Petitioners when it denied Certiorari on June 7, 1971 in Case No. 1415, *Kankakee Federation of Teachers Local No. 886, et al., Petitioners* v. *Board of Education of the Kankakee School District No. 111, etc.*, 29 L. Ed. 2d 679?

2. Should this Court grant Certiorari where there is no issue involving the validity of a state statute on the ground of its being repugnant to the Constitution of the United States?

REASONS FOR DENYING CERTIORARI

1. The Federal question raised and sought to be reviewed by the Petitioner herein was heretofore determined by this Court adversely to Petitioner in Case No. 1415, *Kankakee Federation of Teachers Local No. 886, et al., Petitioners* v. *Board of Education of the Kankakee School District No. 111, etc.*, 29 L. Ed. 2d 679, when Certiorari was denied on June 7, 1971.

In that case this Court denied Certiorari to review the Illinois Supreme Court's Opinion found at 46 Ill. 2d 439, 264 N. E. 2d 18, 75 LRRM 2325. The *Kankakee* case involved all the issues presented herein and is dispositive of this case.

2. Petitioners seek to invoke this Court's jurisdiction under Title 28, United States Code, Section 1257. Apparently, they seek to predicate their right to strike on Kentucky Revised Statutes, Section 336.130, yet have this Court declare this statute

"repugnant to the constitution . . . of the United States" as required by 28 USC, Section 1257. We believe Petitioners should not be allowed this inconsistency.

Moreover, the Petitioners state the Federal question raised herein is found in their Answer filed in the lower court proceeding, referred to as being on pages 13 to 15 of the Transcript of Record. Therefore, Petitioners must base their claim for jurisdiction herein as a result of the allegations contained in Petitioners' pleadings recited on the referred-to transcript pages wherein they contend their rights were violated under Sections 1, 2, 8 and 25 of the Constitution of Kentucky, "under the laws of the State of Kentucky," specifically KRS 336.130, and "under the Constitution of the United States of America and the First, Thirteenth, and Fourteenth Amendments thereto" as well as allegations that the Complaint failed to support a class action under the Kentucky Rules of Civil Procedure.

Respondent submits that the thrust of Petitioners' argument as contained in their "Reasons for Granting the Writ" is based principally not upon a challenge to the validity of the state statute in question, KRS 336.130, but upon "the interpretation" given to that statute by the Court of Appeals of Kentucky. In Petitioners' Petition, page 4, paragraph No. 2, which is illustrative thereof, the Petitioners contend that the Court of Appeals of Kentucky "ignored the plain wording" of the statute; that the statute "contains no definition of the word 'employees'," and that the Court of Appeals wrongly interpreted the word "employee" from the

Act. It is clear from a long list of decisions of this Court that when a state statute is challenged, the construction of that statute as adopted by the State court of last resort is a question of state law, and this Court historically has accepted as it "must" the interpretation and construction given by the state court. *Kingsley Corp.* v. *Regents of the University of N. Y.*, 360 U. S. 684, 3 L. Ed. 2d 1512, 1516, 79 S. Ct. 1362; *Cramp* v. *Board of Public Instruction,* 368 U. S. 278, 7 L. Ed. 2d 285, 291, 82 S. Ct. 275; *N.A.A.C.P.* v. *Button,* 371 U. S. 415, 417, 9 L. Ed. 2d 405, 83 S. Ct. 328; *The Commercial Bank of Cincinnati* v. *Buckingham's Executors,* 5 Howard 317, 343, 12 L. Ed. 169, and *Ward* v. *Krinsky,* 259 U. S. 503, 66 L. Ed. 1033, 1066. Further, this Court in the case of *Farncomb* v. *City and County of Denver,* 252 U. S. 7, 64 L. Ed. 424, 426 made clear that "when dealing with the constitutionality of state statutes challenged under the Fourteenth Amendment, (the Court) accepts the meaning thereof as construed by the highest court of the state. *St. Louis & K.C. Land Co.* v. *Kansas City,* 241 U. S. 419, 427, 60 L. Ed. 1072, 1078, 38 Sup. Ct. Rep. 647." In that case the determination by the Supreme Court of the State of Colorado that a certain state statute provision afforded due process of law was accepted by the Supreme Court of the United States in upholding the constitutional validity of said statute. Also see *Ward* v. *Krinsky, supra,* 66 L. Ed. 1033, 1043.

Although the Petitioners did not explain how their rights were violated under the Thirteenth Amendment of the United States Constitution (involuntary servi-

tude), that contention has been answered time and time again by numerous court decisions, some of which were referred to by the Court of Appeals of Kentucky in its opinion recited on page 20 of the Petitioner's Petition.

Answering Petitioners further contention, under the First Amendment to the United States Constitution, which protects the rights of free speech and public assembly, this Court has ruled that where the contract of employment provides for arbitration that method would be the proper one to settle a labor grievance. *Teamster's Union* v. *Lucas Flour Company,* 369 U. S. 95, 7 L. Ed. 2d 593, 82 S. Ct. 571.

In regard to the contention that the Respondent violated the rights of the Petitioners under Sections 1, 2, 8 and 25 of the Constitution of Kentucky and under the Kentucky Rules of Civil Procedure, it is elementary that this Court accepts the interpretation given by the highest court of the state to the provisions of its state constitution as well as the applicability of procedural rules adopted by the state's highest court. Final determination of this question is strictly for the State's highest court and not one that in any way could demonstrate the involvement of a Federal question; hence, this Court is without jurisdiction to consider such contentions.

CONCLUSION

Respondent respectfully contends that the Petition for Certiorari in this action be denied because:

1. No Federal question was raised regarding the constitutionality of any state statute or right of which this Court will accept jurisdiction.

2. The issue involved in this action under the principle of stare decisis was decided by this Court on June 7, 1971 in Case No. 1415.

Hence, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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Attorneys for Respondent, Board of Education of Jefferson County, Kentucky

CERTIFICATION

This is to certify that pursuant to the provisions of Part VIII, Section 33, Rules of the Supreme Court, that three (3) copies of this Brief for Respondent have been served by depositing same in a United States mail box with first class postage prepaid addressed to each counsel of record for the Petitioners.

E. Gerry Barker

E. GERRY BARKER